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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,240	08/05/2003	Michael K. Martin	031599/259295	6398
826	7590	06/16/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			ELOSHWAY, NIKI MARINA	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/634,240	MARTIN ET AL.	
	Examiner	Art Unit	
	Niki M. Eloshway	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8,10,11,13,15,17-19 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8,10,11,13,15,17-19,21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. Applicant's arguments, filed May 22, 2006, with respect to the heat staking limitation providing structure to the claimed invention, have been fully considered. A new ground(s) of rejection is made in view of the secondary reference of Huang (U.S. 6,766,919).
2. Accordingly, the finality of the previous office action is withdrawn.

Election/Restrictions

3. Claim 26 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 22, 2005.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 8, 10, 18, 19, 21 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Belokin, Jr. et al. (U.S. 5,123,461). Belokin teaches a container body 3, an opening at 8, a panel 39 and a pull feature 43. Regarding the limitations concerning the method by which opening and panel are formed, it has been held that "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art,

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the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

6. Claims 1, 3-5, 8, 10, 11, 18, 19, 21 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Bianchi (U.S. 5,782,373). Bianchi teaches a container body 1, an opening, a panel 2 and a pull feature 3. Regarding the limitations concerning the method by which opening and panel are formed, it has been held that "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

7. Claims 1, 3, 6 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Manska (U.S. 4,883,198). Manska teaches a container body 10, an opening at 16, a panel with pull feature (col. 2 lines 48-55). Regarding the limitations concerning the method by which opening and panel are formed, it has been held that "even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bianchi (U.S. 5,782,373) in view of Tedford, Jr. (U.S. 6,328,203). Bianchi discloses the claimed invention except for the adhesive of the ring. Tedford, Jr. teaches that it is known to provide a pull tab with adhesive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Bianchi with the panel and ring arrangement of Tedford, Jr., in order to provide the container with a low cost opening feature.

10. To the degree "heat staked" imparts structure in the claims, claims 1, 3, 8, 10, 18, 19, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belokin, Jr. et al. (U.S. 5,123,461) in view of Huang et al. (U.S. 6,766,919). Belokin teaches a container body 3, an opening at 8, a panel 39 and a pull feature 43. Belokin does not teach that the panel is heat staked to the remaining portion of the end wall. Huang et al. teaches that it is known to heat stake two elements of a frangible closure together (see col. 6 lines 5-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Belokin with the panel being heat staked, as taught by Huang, since heat staking is a well known and widely used process of joining elements together.

11. To the degree "heat staked" imparts structure in the claims, claims 1, 3-5, 8, 10, 11, 18, 19, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bianchi (U.S. 5,782,373) in view of Huang et al. (U.S. 6,766,919). Bianchi does not teach that the panel is heat staked to the remaining portion of the end wall. Huang et al. teaches that it is known to heat stake two elements of a frangible closure together (see col. 6 lines 5-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Bianchi with the panel being heat staked, as taught by Huang, since heat staking is a well known and widely used process of joining elements together.

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12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bianchi (U.S. 5,782,373) in view of Huang et al. (U.S. 6,766,919), as applied to claim 10 above, and further in view of Tedford, Jr. (U.S. 6,328,203). The modified container of Bianchi discloses the claimed invention except for the adhesive of the ring. Tedford, Jr. teaches that it is known to provide a pull tab with adhesive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Bianchi with the panel and ring arrangement of Tedford, Jr., in order to provide the container with a low cost opening feature.

13. To the degree “heat staked” imparts structure in the claims, claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bianchi (U.S. 5,782,373) in view of Huang et al. (U.S. 6,766,919) and Tedford, Jr. (U.S. 6,328,203). Bianchi does not teach that the panel is heat staked to the remaining portion of the end wall or the adhesive of the ring. Huang et al. teaches that it is known to heat stake two elements of a frangible closure together (see col. 6 lines 5-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Bianchi with the panel being heat staked, as taught by Huang, since heat staking is a well known and widely used process of joining elements together.

Tedford, Jr. teaches that it is known to provide a pull tab with adhesive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Bianchi with the panel and ring arrangement of Tedford, Jr., in order to provide the container with a low cost opening feature.

14. To the degree “heat staked” imparts structure in the claims, claims 1, 3, 6 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manska (U.S. 4,883,198) in view of Huang et al. (U.S. 6,766,919). Manska does not teach that the panel is heat staked to the remaining portion of the end wall. Huang et al. teaches that it is known to heat stake two elements of a frangible closure together (see col. 6 lines 5-9). It would have been obvious to one

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having ordinary skill in the art at the time the invention was made to provide the container of Manska with the panel being heat staked, as taught by Huang, since heat staking is a well known and widely used process of joining elements together.

Response to Arguments

15. The references of Maenke (US 2004/0140308 A1), Mosior (U.S. 5,531,346), Ekkert (U.S. 4,957,211) and Boersma (U.S. 5,485,938) are cited for their disclosure that two elements of a closure may be joined by a variety of methods, including heat staking. In addition, Applicant's Specification states that the closure may be made by a variety of processes and is not limited to heat staking (page 7 lines 3-7 and page 8 line 16 through page 9 line 26). On lines 23-26 of page 9 of the Specification, Applicant states that "[r]egardless of the method of reattaching utilized or the configuration of the panel, pull feature, and sealed frangible interface, the panel 12 is reattached to the container body 10'' to seal the container and to provide a convenient method of opening the container."

Conclusion

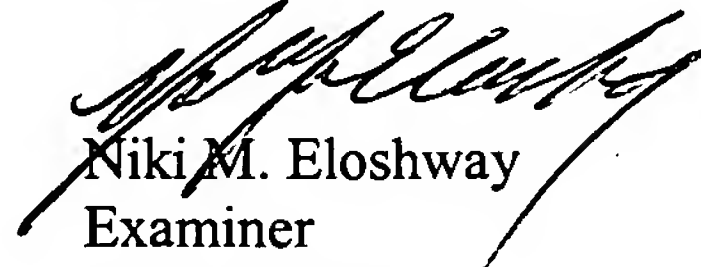
16. **In view of the new grounds of rejection, THIS ACTION IS MADE NON-FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached on Thursdays and Fridays 8 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Niki M. Eloshway
Examiner
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nme